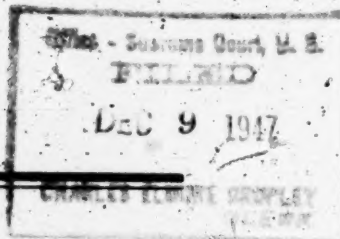


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 101.

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCAK, JOHN
K. MCKEE, ERNEST G. DRAPER AND RUDOLPH M. EVANS,
Petitioners,

v.

PEOPLES BANK OF LAKEWOOD VILLAGE, CALIFORNIA.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia.

RESPONDENT'S REPLY BRIEF.

✓ SAMUEL B. STEWART, JR.,
✓ LUTHER E. BIRDZELL,
Attorneys for Respondent.

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RESPONDENT'S REPLY BRIEF.

In their Reply Brief, filed on the eve of argument, Petitioners have revived a contention omitted from their main brief and which we had thought abandoned following our demonstration of its unsoundness in the lower courts,—the contention that Peoples Bank could have prevented the acquisition of “any interest in such bank” (the contingency which brought Condition No. 4 into operation) “by the sim-

ple expedient of adopting a by-law limiting such disposition to meet the requirements of the Condition." (Pet. Reply Br. p. 2.)

Petitioners' desperate eleventh hour reassertion of this abandoned contention indicates their agreement with our view that the Board is not authorized by the statute to impose any condition of membership based upon a contingency which is beyond the control of the Bank. It also requires a restatement of our answer to the contention.

A text authority is cited in support of the suggestion which shows the authorities to be divided upon the validity of restrictive by-laws applicable to transfers of corporate stock in furtherance of some corporate policy, no California case being cited either way. Obviously this is not an inviting prospect, especially when the nature of a by-law to meet the broad requirements of this condition is considered. They would not be met by a by-law which would merely restrict the transfer, for the condition restricts ~~the acquisition~~, directly or indirectly, of any interest in such bank. It even purports expressly to require Bank of America or Transamerica or any unit of the Transamerica group, or any holding company affiliate of any subsidiary to obtain the written consent of the Board before making any loan to any person for the purpose of acquiring bank stock if it should result in the acquisition of any interest in this bank. We do not know how or whether we could induce strangers so to conduct their business. It seems to us that this should come more properly within the jurisdiction of the Board if it has such power, for both Transamerica and Bank of America are subject to its legal supervision.

We confess our inability, as we did in the court below, to draft any by-law which would meet the requirements of this condition and still be valid according to any known authority. Petitioners have not answered this dilemma by suggesting the form which such a by-law might take. Doubtless if they had been able to concoct such a form they would have submitted it with their other requirements to Peo-

ples Bank and its stockholders in April, 1942, and *then*, no Condition No. 4 would have been necessary. It must be remembered that the condition is much broader than the commitments the shareholders were required to sign preliminary to the admission of the bank to the System (R. 58). The stockholders were not requested by the Board to restrict their right to sell or pledge their stock in the future, and since, by that date, the stock was all issued and paid for, it was too late for the Bank to force them to give up the property rights they had already acquired.

Moreover, any form of by-law which might have been conceived by either the Bank or the Board in an effort to meet the situation, before it was too late, would have had to satisfy the requirement of the California statute cited by petitioners (Pet. Reply Br. p. 3) that "special qualifications", "not in conflict with law" be provided for "persons who may be shareholders". This statute was obviously designed to meet the situation of corporations which might need stockholders having "special qualifications", and not to provide a means of prohibiting ownership by a named person or group of persons.

This suggestion of petitioners' counsel appears to be just one more desperate tactic of diversion from the central point of the case: that the Board lacked statutory authority to impose Condition No. 4.

Other points discussed in petitioners' reply brief have been adequately considered in respondent's main brief.

Dated, December 9, 1947.

Respectfully submitted,

SAMUEL B. STEWART, JR.,
LUTHER E. BIRDZELL,
Attorneys for Respondent.